IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

FAO.No. 281 OF 2007 & CAVEAT OP. . 602/2007

AGAINST THE ORDER DATED 23/07/2007 IN IA 3389/07 IN
OS.456/2007 of II ADDL.SUB COURT,ERNAKULAM

APPELLANT/PETITIONERS - PLAINTIFFS

1. M.A.KHARIM, S/O.MOHAMMED KASSIM,
AL-AMAN RESIDENCY AVENUE, ASRAMAM CHERRY,
ASRAMAM P.O., KOLLAM - 691 002.

2. H.SHEREEFA @ H.SHEREEFA BEEVI,
W/O.M.A.KHARIM, AL-AMAN RESIDENCY AVENUE,
ASRAMAM CHERRY, ASRAMAM P.O., KOLLAM-691 002.

3. SEEYAL A.KHARIM, S/O.M.A.KHARIM,
AL-AMAN RESIDENCY AVENUE,
ASRAMAM CHERRY, ASRAMAM P.O.,
KOLLAM - 691 002.

4. SEEYAS A.KHARIM, S/O.M.A.KHARIM,
AL-AMAN RESIDENCY AVENUE,
ASRAMAM CHERRY, ASRAMAM P.O.
KOLLAM - 691 002.

5. SINJU A.KHARIM, S/O.M.A.KHARIM,
AL-AMAN RESIDENCY AVENUE,
ASRAMAM CHERRY, ASRAMAM P.O.
KOLLAM - 691 002.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS: 7TH DEFENDANT

SHONEY SANIL, W/O.T.S.SANAL,
THANDASSERY HOUSE, VADUTHALA DESOM,
CHERANALLOR VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT. (CAVEATOR)

BY ADV. SRI.K.P.SREEKUMAR

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 20/09/2007, ALON G WITH CAVEAT O.P. 602/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN & V. K. MOHANAN, JJ.

F.A.O. 281 OF 2007 & CAVEAT O.P. 602/2007

DATED THIS, THE 20TH DAY OF SEPTEMBER, 2007.

J U D G M E N T

Raman, J.

Heard both sides. This is an appeal against the order passed in I.A. 3389/2007 in O.S. No. 456/2007 by the IInd Additional Sub Judge, Ernakulam. The application was for temporary injunction restraining the respondents and her men from committing any waste, damage or putting up any construction, inducting strangers into the plaint schedule property and from alienating the property pending disposal of the suit.

2. The respondent herein is the petitioner in the Caveat Original petition. The suit is one for declaration of title and recovery of possession and injunction. Pending trial, the present application was filed for a temporary injunction. Respondent is the auction purchaser of the plaint schedule property. The contention of the appellants is that the property absolutely belonged to them and behind their back the original vendor executed an agreement for sale with a third party and ultimately, the said third party instituted the suit for recovery of the advance amount which was

decreed. They allege collusion between the said vendor and the vendee. It was for realisation of the decreed amount that execution proceedings were taken and ultimately, the property was sold.

3. Learned counsel for the respondent would submit that she is a bona fide purchaser in a court auction sale and hence the allegation made in the plaint against the original vendor or vendee, as the case may be, in no way affect her right. The suit is pending trial and it will not be in the interest of either side to enter a finding on the contentions now made at this stage. At the same time, it is necessary that some interim order is passed to protect the interest of either side. Even though the present application is filed with wider prayers included therein, the limited relief of committing waste ought to have been granted by the court below.

4. Learned counsel Sri. K.P. Sreekumar, appearing on behalf of the respondent would submit that pursuant to the purchase of the property, she is in the process of improving the property and therefore, no order restraining her from improving the property could be granted.

5. After hearing both sides, we direct that till the disposal of the suit, the respondent herein shall not commit any waste in the property or alienate the property. However, she is free to make improvements int he property at

her own risk. The court below shall expedite the trial of the suit and dispose of the same expeditiously, at any rate, within a period of six months, after completing the pleadings.

The F.A.O. and the Caveat O.P. are disposed of as above.

P.R. RAMAN,
(JUDGE)

V. K. MOHANAN,
(JUDGE)

knc/-